

REMARKS

Claims 1-24 are pending in this application. Claim 21 is amended herein. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The Examiner required that Figures 2-5 be designated as prior art. Figure 2 has been so designated. However, as is discussed in detail below with respect to the 35 U.S.C. §102(b) rejection based on APA "Applicant's Prior Art," Figures 3-5 are not prior art, are not described or indicated by Applicant as prior art, and in fact, represents one of the embodiments of the invention even if designated as a less preferred embodiment.

Claim 21 was rejected under 35 U.S.C. §112. However, claim 21 has now been amended by changing the word "oxide" to "silicon dioxide" as is supported in Paragraph [0041], line 8.

On the first page of the Office Action, item 4, the Examiner indicates that claims 1-21 are pending in the application. However, the application includes claims 1-24 and the fee transmittal sheet shows that Applicant paid for claims 1-24. Claims 1-21 are method claims and claims 22-24 are apparatus claims. However, according to Applicant's attorney's files, there has not been a requirement for election. Further, there is no indication in item 4 that claims 22-24 were withdrawn from consideration.

Claims 6, 8, 14 and 16 were indicated as allowable, and claims 1-3, 5, 8-11, 13, 17-18 and 20 were rejected under 35 U.S.C. §102(b) as being anticipated by "Applicant's Prior Art" (APA). It should be noted that claim 8 was both rejected and indicated as allowable. The remainder of the claims were rejected under 35 U.S.C. §103(a) as being obvious over "Applicant's Prior Art" in view of Divakarumi, *et al.* (U.S. Patent No. 6,184,107) or Mandelman, *et al.* (U.S. Patent No. 6,284,593).

As stated above, the Examiner alleges that the embodiment of the invention associated with Figures 3-5 and the corresponding text at Paragraphs [0024] – [0029] is "Applicant's Prior Art." However, these drawings and associated text are not prior art and are not in any way designated by Applicant as prior art. Line 1 of Paragraph [0024] does describe the embodiment as "less preferred," but that certainly is not an acknowledgement by Applicant that this is prior art. In the first paragraph (Paragraph [0022]) under the heading "Detailed Description of Illustrative Embodiments," there is stated, "the presently preferred embodiments are discussed in detail below." Further, the admitted prior art of Figure 1 and the associated text of Figure 1 is not under the heading "Detailed Description of Illustrative Embodiments," but is in fact at Paragraph [0007] under the heading "Background." Also, Paragraph [0010] under the heading "Summary of the Invention" is substantially a paraphrase of the claims describing the embodiments of Figures 3-5. Claims 1-21 are method claims and, although Figure 5 may look similar to Figure 2, this is not even a suggestion much less an admission that the discussed method is prior art. The fact that the resulting structure shown in Figure 5 may be similar to the prior art Figure 1 is in no way an indication that the described and claimed method of Figures 3-5 is old or prior art. Also, of course, this has no affect on the apparatus claims 22-24 since these claims are not associated with Figure 5.

Therefore, it is clear that the embodiments of Figures 3-5 and the associated text must be removed as a §102 reference and as the primary reference under §103. Thus, it is respectfully submitted that no reference is presently applied against the claims that were rejected under 35 U.S.C. §102.

Applicant's attorney has reviewed the Divakarumi, *et al.* reference and the Mandelman, *et al.* reference used in combination with the embodiments described and shown in Figures 3-5 and

classified as APA by the Examiner to reject claims 4, 7, 12, 15, 19 and 21 under 35 U.S.C. §103(a). It is believed that these secondary references in no way overcome the void left by removing the Figures 3-5 embodiments as references.

Therefore, it is believed the application is in condition for allowance and the Examiner is respectfully required to pass the case to issue. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone James C. Kesterson, Applicant's attorney, at 972-732-1001 so that such issues may be resolved as expeditiously as possible. No fee is believed due in connection with this filing. However, should one be deemed due, the Commissioner is hereby authorized to charge Deposit Account No. 50-1065.

Respectfully submitted,

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Date

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